

Official Communication
Attorney Docket MIO 0083 PA
Serial No. 09/943,078

REMARKS

The applicant asserts that the species restriction with respect to Invention I is improper because no explanation was given for the basis of the restriction. According to 35 U.S.C. §121, when a requirement for restriction is made, an Examiner must state the reasons why the inventions as claimed are independent and distinct. According to the MPEP §816, "[t]he particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given."

Also, the species restriction is improper because according to the M.P.E.P. §806.04(f), claims to be restricted to different species must be mutually exclusive. The claims of Species I-A include two independent claims (claims 1 and 39). Each independent claim recites a trench having a gate area and a local interconnect area. However, the recitation of "a trench" is not limited to a *single* trench as the examiner suggests. Likewise, the recitations of "a local interconnect area" and "a gate area" are not limited to "*singular*" interpretation.

Further, the claims of Species I-B are not limited to a plurality of trenches, each trench having a plurality of local interconnects and a plurality of gates as the Examiner suggests. The claims associated with species I-B include two independent claims (claims 17 and 23). Both independent claims 17 and 23 recite "at least one trench" having "at least one gate area" and "at least one local interconnect area". The phrase "at least one" should be given its ordinary meaning to include one or more than one. As such, the claims the define species I-A and I-B respectively are not mutually exclusive. Accordingly, the applicant requests the Examiner withdraw the species restriction.

Also, the claims identified as invention II, including claims 29-38, 40 and 41, are classified in class 438 subclass 221. This appears to be an illogical classification for the above claims. Subclass 221 is indented under subclass 218 and includes process for making complementary insulated gate field effect transistors (such as CMOS) wherein lateral isolation is provided by forming a recess in a semiconductor substrate and refilling

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the recess at least in part with a dielectric. Independent claim 29 does not recite lateral isolation at all. In fact, claim 29 does not even recite the formation of a trench in the semiconductor substrate. Certainly the claimed invention can be used in conjunction with lateral isolation, however, such limitation is not required to practice the claimed invention. Likewise, where the present claimed invention may certainly be used with complementary insulated gate field effect transistor technologies such as CMOS, such a limitation does not appear in the claims and the invention is not so limited.

Conclusion:

The applicant asserts that the species restriction of invention I is improper. If the examiner agrees that the species restriction of invention I should be withdrawn, then the applicant would elect Invention I and request initial prosecution on the merits of claims 1-28 and 39.

Applicants respectfully submit that the application is in condition for allowance. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

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Respectfully submitted,

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